

AMENDED IN SENATE MARCH 31, 2009

**SENATE BILL**

**No. 782**

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**Introduced by Senator Yee**

February 27, 2009

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~~An act to amend Sections 26840.7 and 26840.8 of the Government Code, and to amend Sections 18293 and 18305 of the Welfare and Institutions Code, relating to domestic violence, and making an appropriation therefor. An act to add Section 1161.3 to the Code of Civil Procedure, relating to unlawful detainer.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 782, as amended, Yee. ~~Domestic violence: marriage license fees. Residential tenancies: domestic violence.~~

*Existing law governs the hiring of real property based on the terms of the agreement, or on the behavior of the parties. Under existing law, a tenant may notify the landlord in writing that he or she, or a household member, was a victim of an act of domestic violence, sexual assault, or stalking, and intends to terminate the tenancy. The tenant is released from any rent payment obligation 30 days following the giving of the notice, or as specified.*

*Existing law establishes the criteria for determining when a tenant is guilty of unlawful detainer of a premises, and includes committing nuisance in this regard. Existing law provides, until January 1, 2012, for the purposes of the law of unlawful detainer, that if a person commits any specified act or acts of domestic violence, sexual assault, or stalking against another tenant or subtenant on the premises, there is a rebuttable presumption affecting the burden of proof that the person has committed a nuisance on the premises if the victim or a member of the victim's household has not vacated the premises.*

*This bill would create a defense to an action for possession under the unlawful detainer provisions described above if the court determines that (1) the tenant or the tenant's household member is a victim of an act or acts that constitute domestic violence, sexual assault, or stalking, and (2) the notice to vacate is substantially based upon the act or acts against the tenant or a tenant's household member that constitute domestic violence, sexual assault, or stalking, including, but not limited to, an action for possession based on complaints of noise, disturbances, or repeated presence of police. The bill would require a landlord to retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is received in confidence from a tenant or a tenant's household member who is a victim, except as specified.*

~~Existing law requires the collection of a fee in addition to the basic fee for the issuance of a marriage license and for the issuance of an authorization for the performance of marriages without a license, in the amount of \$23, for funding of domestic violence shelter-based programs, to be disposed of by the county clerk under specified provisions, including a requirement that \$4 be used, to the extent feasible, to develop and expand domestic violence centers to target underserved areas and populations.~~

~~This bill would increase the fee required to be collected for domestic violence centers to \$30 and would require \$6 of that amount to be allocated to develop and expand shelter-based programs to target underserved areas and populations to the extent feasible.~~

~~This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature. By providing for the expenditure of state tax revenue, this bill would make an appropriation.~~

~~Vote:  $\frac{2}{3}$ -majority. Appropriation: yes-no. Fiscal committee: yes no. State-mandated local program: no.~~

*The people of the State of California do enact as follows:*

- 1     SECTION 1. *The Legislature finds and declares all of the*
- 2     *following:*
- 3     (a) *Domestic violence is a widespread problem impacting one*
- 4     *in three households in the United States in all communities.*

1     ***(b) Safe housing for domestic violence victims is essential for***  
2 ***safe recovery.***

3     ***(c) Countless studies demonstrate that stable, safe housing is***  
4 ***a public safety issue, a critical element of ensuring the safety of***  
5 ***domestic violence and stalking victims.***

6     ***(d) Landlords may evict domestic violence and stalking victims***  
7 ***based upon complaints of noise, fighting, or repeated visits from***  
8 ***the police to a victim's residence, even though they are results of***  
9 ***crimes committed against the victim.***

10    ***(e) Domestic violence and stalking victims should not lose their***  
11 ***housing because they are being abused and should not be forced***  
12 ***to leave their homes in order to report abuse.***

13    ***(f) The United States government and many states, cities, and***  
14 ***counties already have enacted comprehensive tenants' rights***  
15 ***protections for victims of domestic violence and stalking.***

16    ***SEC. 2. Section 1161.3 is added to the Code of Civil Procedure,***  
17 ***to read:***

18    ***1161.3. (a) It shall be a defense to an action for possession***  
19 ***under paragraph (4) of Section 1161 if the court makes both of***  
20 ***the following determinations:***

21    ***(1) The tenant or the tenant's household member is a victim of***  
22 ***an act or acts that constitute domestic violence, sexual assault, or***  
23 ***stalking.***

24    ***(2) The notice to vacate is substantially based upon the act or***  
25 ***acts against the tenant or a tenant's household member that***  
26 ***constitute domestic violence, sexual assault, or stalking, including,***  
27 ***but not limited to, an action for possession based on complaints***  
28 ***of noise, disturbances, or repeated presence of police.***

29    ***(b) In making the determinations under subdivision (a), the***  
30 ***court shall consider evidence, which may include, but is not limited***  
31 ***to, any of the following:***

32    ***(1) A copy of a temporary restraining order or emergency***  
33 ***protective order issued pursuant to Part 3 (commencing with***  
34 ***Section 6240), Part 4 (commencing with Section 6300), or Part 5***  
35 ***(commencing with Section 6400) of the Family Code, Section 136.2***  
36 ***of the Penal Code, Section 213.5 of the Welfare and Institutions***  
37 ***Code, or Section 527.6 of this code, that protects the tenant or***  
38 ***household member from further domestic violence, sexual assault,***  
39 ***or stalking.***

1     (2) A copy of a written report by a peace officer employed by  
2     a state or local law enforcement agency acting in his or her official  
3     capacity, stating that the tenant or tenant's household member  
4     has filed a report alleging that he or she is a victim of domestic  
5     violence, sexual assault, or stalking.

6     (3) Other written documentation from a qualified third party  
7     of the act or acts constituting domestic violence, sexual assault,  
8     or stalking.

9     (c) If two or more cotenants are parties seeking relief under  
10    subdivision (a), and each alleges that he or she was a victim of  
11    domestic violence, sexual assault, or stalking perpetrated by  
12    another cotenant who is also a party, the court may determine  
13    whether a tenant acted as the dominant aggressor in the act or  
14    acts constituting domestic violence, sexual assault, or stalking. In  
15    making the determination, the court shall consider the factors  
16    listed in paragraph (1) of subdivision (b) of Section 13701 of the  
17    Penal Code. A tenant who the court determines was the dominant  
18    aggressor in the act or acts constituting domestic violence, sexual  
19    assault, or stalking is not entitled to relief under subdivision (a).

20    (d) Unless the tenant or the tenant's household member has  
21    obtained a protective order against the alleged abuser to vacate  
22    or stay away from the dwelling unit as a result of an act or acts  
23    constituting domestic violence, sexual assault, or stalking against  
24    the tenant or the tenant's household member, the tenant may not  
25    obtain relief under subdivision (a) if all of the following apply:

26    (1) The tenant was granted relief against the landlord under  
27    subdivision (a) in an action for possession of the dwelling unit  
28    within the previous five years.

29    (2) A subsequent action for possession of the dwelling unit has  
30    now been filed.

31    (3) The notice to vacate in the subsequent action for possession  
32    is substantially based upon continuing acts constituting domestic  
33    violence, sexual assault, or stalking by the same person alleged  
34    to be the abuser in the previous action for possession.

35    (e) For the purposes of this section:

36    (1) "Household member" means a member of the tenant's family  
37    who lives in the same household as the tenant.

38    (2) "Protective order" means a temporary restraining order  
39    or emergency protective order issued pursuant to Part 3  
40    (commencing with Section 6240), Part 4 (commencing with Section

6300), or Part 5 (commencing with Section 6400) of the Family Code, Section 136.2 of the Penal Code, Section 213.5 of the Welfare and Institutions Code, or Section 527.6 of this code, that protects the tenant or household member from further acts of domestic violence, sexual assault, or stalking.

(3) “Qualified third party” means a peace officer or victim advocate employed by a state or local law enforcement agency, a licensed clinical social worker (LCSW), or a marriage and family therapist (MFT), acting in his or her official capacity.

(4) “Victim of domestic violence, sexual assault, or stalking” means any person who has been, or is currently being, subjected to one or more of the following:

(A) Domestic violence, as defined in Section 6211 of the Family Code or Section 13700 of the Penal Code.

(B) Sexual assault, as defined in Section 261, 261.5, 262, 286, 288a, or 289 of the Penal Code.

(C) Stalking, as defined in Section 1708.7 of this code or Section 646.9 of the Penal Code.

(5) “Written documentation from a qualified third party” means a document signed and dated within the preceding 60 days by a qualified third party stating all of the following:

(A) That the tenant notified the qualified third party that he or she was a victim of domestic violence, sexual assault, or stalking.

(B) The time, date, and location of the act or acts that constitute the domestic violence, sexual assault, or stalking.

(C) That the tenant informed the qualified third party of the name of the alleged perpetrator of the act or acts of domestic violence or stalking, if known to the victim.

(f) Nothing in this section shall be construed to affect the tenant’s liability for delinquent rent or other sums owed to the landlord, or the landlord’s remedies in recovering against the tenant for those sums.

(g) A landlord shall retain in strictest confidence all information regarding any act or acts of domestic violence, sexual assault, or stalking that is received in confidence from a tenant or a tenant’s household member who is a victim, except to the extent that disclosure is necessary to provide for a reasonable accommodation for the victim or is otherwise required pursuant to federal, state, or local law. The victim may authorize limited or general release

1 *of any information otherwise deemed confidential under this*  
2 *subdivision.*

3 ~~SECTION 1. Section 26840.7 of the Government Code is~~  
4 ~~amended to read:~~

5 ~~26840.7. In addition to the fee prescribed by Section 26840~~  
6 ~~and as authorized by Section 26840.3, the county clerk shall collect~~  
7 ~~a fee of thirty dollars (\$30) at the time of issuance of the license.~~  
8 ~~The fee shall be disposed of by the clerk pursuant to Chapter 5~~  
9 ~~(commencing with Section 18290) of Part 6 of Division 9 of the~~  
10 ~~Welfare and Institutions Code. Of this amount, six dollars (\$6)~~  
11 ~~shall be used, to the extent feasible, to develop or expand domestic~~  
12 ~~violence shelter-based programs to target underserved areas and~~  
13 ~~populations.~~

14 ~~SEC. 2. Section 26840.8 of the Government Code is amended~~  
15 ~~to read:~~

16 ~~26840.8. In addition to the fee prescribed by Section 26840.1~~  
17 ~~and as authorized by Section 26840.3, the person issuing an~~  
18 ~~authorization for the performance of a marriage pursuant to Part~~  
19 ~~4 (commencing with Section 500) of Division 3 of the Family~~  
20 ~~Code or the county clerk, upon providing a blank authorization~~  
21 ~~form pursuant to Part 4 (commencing with Section 500) of Division~~  
22 ~~3 of the Family Code, shall collect a fee of thirty dollars (\$30) at~~  
23 ~~the time of providing the authorization. The fee shall be disposed~~  
24 ~~of pursuant to Chapter 5 (commencing with Section 18290) of Part~~  
25 ~~6 of Division 9 of the Welfare and Institutions Code. Of this~~  
26 ~~amount, six dollars (\$6) shall be used, to the extent feasible, to~~  
27 ~~develop or expand domestic violence shelter-based programs to~~  
28 ~~target underserved areas and populations.~~

29 ~~SEC. 3. Section 18293 of the Welfare and Institutions Code is~~  
30 ~~amended to read:~~

31 ~~18293. (a) In order to be eligible for funding pursuant to this~~  
32 ~~chapter, a domestic violence shelter-based program shall~~  
33 ~~demonstrate its ability to receive and make use of any funds~~  
34 ~~available from governmental, voluntary, philanthropic, or other~~  
35 ~~sources that may be used to augment any state or county funds~~  
36 ~~appropriated for the purposes of this chapter. Each domestic~~  
37 ~~violence shelter-based program shall make every attempt to qualify~~  
38 ~~the domestic violence shelter-based program for any available~~  
39 ~~federal funding.~~

1     ~~(b) No provision of this section is intended to prohibit domestic~~  
2 ~~violence shelter-based programs receiving funds pursuant to this~~  
3 ~~chapter from receiving additional funds from any other public or~~  
4 ~~private source. Funds provided pursuant to this chapter shall not~~  
5 ~~be used to reduce the financial support from other public or private~~  
6 ~~sources.~~

7     ~~(c) Proposed or existing domestic violence shelter-based~~  
8 ~~programs that meet the requirements set forth in Section 18294,~~  
9 ~~shall receive funding pursuant to this chapter upon the approval~~  
10 ~~of the local board of supervisors.~~

11     ~~(d) Funding shall be given to agencies and organizations whose~~  
12 ~~primary function is to administer domestic violence shelter-based~~  
13 ~~programs. Any additional fees received by Alameda County, Contra~~  
14 ~~Costa County, Solano County, and the City of Berkeley at the time~~  
15 ~~of issuance of a marriage license pursuant to Sections 18308,~~  
16 ~~18309, and 18309.5, that are in excess of the thirty dollar (\$30)~~  
17 ~~fee collected pursuant to this act, shall be available to that city or~~  
18 ~~county for funding domestic violence programs other than domestic~~  
19 ~~violence shelter-based programs.~~

20     ~~(e) Prior to approving a domestic violence shelter-based program~~  
21 ~~or programs for this funding, the board shall consult with~~  
22 ~~individuals and groups that have expertise in the problems of~~  
23 ~~domestic violence and in the operation of domestic violence~~  
24 ~~shelter-based programs including operations of existing domestic~~  
25 ~~violence shelter-based programs.~~

26     ~~(f) Upon approving one or more domestic violence shelter-based~~  
27 ~~programs for funding, the board shall direct the county treasurer~~  
28 ~~to disburse moneys from the county's domestic violence~~  
29 ~~shelter-based program special fund and for funding, the board shall~~  
30 ~~designate a local agency to monitor the domestic violence~~  
31 ~~shelter-based program or programs. This monitoring shall include~~  
32 ~~information regarding the number of persons requesting services,~~  
33 ~~the number of persons receiving services according to the type of~~  
34 ~~services provided, and the need, if any, for additional services or~~  
35 ~~staffing.~~

36     ~~(g) Programs that receive funding through this chapter shall, to~~  
37 ~~the extent feasible, provide services to persons with a physical~~  
38 ~~disability who are victims of domestic violence. If the program~~  
39 ~~cannot provide the services, then the program's staff, to the extent~~  
40 ~~feasible, shall assist in referring the person with a physical~~

1 disability to other programs and services in the community where  
2 assistance may be obtained.

3 (h) ~~The process to determine eligibility of a domestic violence~~  
4 ~~shelter-based program to receive funding pursuant to this chapter~~  
5 ~~shall have as its primary purpose to ascertain that the program~~  
6 ~~meets the service requirements of Section 18294. The process shall~~  
7 ~~be expedient and shall include a mechanism for annual~~  
8 ~~recertification.~~

9 (i) ~~Funding obtained pursuant to this chapter is for the~~  
10 ~~unrestricted use of a recipient domestic violence shelter-based~~  
11 ~~program, and may be used for direct and indirect costs.~~

12 SEC. 4. ~~Section 18305 of the Welfare and Institutions Code is~~  
13 ~~amended to read:~~

14 18305. ~~(a) At the time of issuance of a marriage license~~  
15 ~~pursuant to Section 26840 of the Government Code, thirty dollars~~  
16 ~~(\$30) of each fee paid shall be collected by the county clerk for~~  
17 ~~deposit into the county domestic violence shelter-based programs~~  
18 ~~special fund. The fees collected in this special fund shall be~~  
19 ~~disbursed to approved domestic violence shelter-based programs~~  
20 ~~on a yearly or more frequent basis commencing July 1, 1980. The~~  
21 ~~funds shall be disbursed using a request for qualification (RFQ)~~  
22 ~~process.~~

23 (b) ~~The board of supervisors shall direct the county clerk to~~  
24 ~~deposit thirty dollars (\$30) of each fee into the county domestic~~  
25 ~~violence shelter-based programs special fund. The county domestic~~  
26 ~~violence shelter-based programs special fund shall fund domestic~~  
27 ~~violence shelter-based programs established pursuant to Section~~  
28 ~~18304. Six dollars (\$6) of each thirty dollars (\$30) deposited into~~  
29 ~~the county domestic violence shelter-based programs special fund~~  
30 ~~shall be used, to the extent feasible, to support or expand domestic~~  
31 ~~violence shelter-based programs to target underserved areas and~~  
32 ~~populations. No more than 8 percent of the funds shall be expended~~  
33 ~~for the administrative costs associated with the collection and~~  
34 ~~segregation of the additional marriage license fees, administration~~  
35 ~~of the county domestic violence shelter-based programs special~~  
36 ~~fund, monitoring of the domestic violence shelter-based programs,~~  
37 ~~and meeting the other administrative requirements imposed by this~~  
38 ~~chapter. Counties that do not participate in the establishing or~~  
39 ~~funding of domestic violence shelter-based programs pursuant to~~  
40 ~~this chapter shall be entitled to retain up to 4 percent of the funds~~



1 ~~for the administrative costs associated with the collection and~~  
2 ~~segregation of the additional marriage license fees and the deposit~~  
3 ~~of these fees in the county domestic violence shelter-based~~  
4 ~~programs special fund.~~

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